

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

UNITED STATES OF AMERICA

v.

MICHAEL DAVID BEAR,

Defendant.

Case No. 2:05CR00029

OPINION

By: James P. Jones
United States District Judge

Michael David Bear, Pro Se Defendant.

The defendant, proceeding pro se, filed a pleading that he styled as “Judicial Notice Rules of Evidence § 201,” seeking to vacate his conviction based on allegations of ineffective assistance of counsel regarding plea negotiations. Because the cited authority does not authorize the requested relief,¹ I deny the defendant’s motion under § 201, construe his submission as a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C.A. § 2255 (West Supp. 2012), and dismiss it as successive.

This court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth

¹ The defendant asserts that the court may now, years after his conviction, vacate that judgment based on the recent decisions by the United States Supreme Court in *Lafler v. Cooper*, 132 S. Ct. 1376 (Mar. 21, 2012), and *Missouri v. Frye*, 132 S. Ct. 1399 (Mar. 21, 2012). Rule 201, by its own terms, “governs judicial notice of an adjudicative fact only,” not court decisions. Fed. R. Evid. 201(a). Rule 201 provides no authority for the court to revisit the defendant’s criminal judgment.

Circuit that the claims in the motion meet certain criteria. See 28 U.S.C.A. § 2255(h). The defendant previously filed a § 2255 motion concerning this same conviction and sentence. See *United States v. Bear*, Nos. 1:06CR00018, 2:05CR00029, 2010 WL 2773309 (W.D. Va. July 14, 2010). Because the defendant offers no indication that he has obtained certification from the court of appeals to file a second or successive § 2255 motion, I must dismiss his current action without prejudice.

A separate Final Order will be entered herewith.

DATED: June 29, 2012

/s/ James P. Jones
United States District Judge